

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Case No. 20-23494 (CMG)
	:	
	:	Chapter 11
Pranav Desai,	:	
	:	The Honorable Christine M. Gravelle
Debtor.	:	
	:	Hearing Date: December 21, 2021 at 2 pm

**OBJECTION OF THE UNITED STATES TRUSTEE TO MODIFIED CHAPTER 11
PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR PRANAV DESAI**

The United States Trustee for Regions 3 & 9 (“U.S. Trustee”), by and through his counsel, and in furtherance of his duties pursuant to 28 U.S.C. §§ 586(a)(3) and (5), hereby asserts this objection (“Objection”) to the confirmation of the *Modified Chapter 11 Plan of Reorganization Proposed by the Debtor Pranav Desai* (“Modified Plan”) (Docket No. 63), and in support of the Objection, respectfully represents as follows:

BACKGROUND

1. On December 11, 2020 (“Petition Date”), Pranav Desai (“Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. *See* Docket No. 1.
2. The Debtor continued to manage his affairs and property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On October 19, 2021, the Debtor filed the Modified Plan, which is the subject of this Objection. *See* Docket No. 63.

4. The Debtor's plan projections at Exhibit C show total monthly income of \$8,500, which is \$6,000 for W-2 income and \$2,500 for distributions from "DMP & TIG DE & Frodo." *See* Docket No. 63-3. This does not appear to account for any payroll deductions. *See id.*

5. The plan projections also show monthly expenses totaling \$6,706.67, which is comprised of mortgage (\$2,240), utilities (\$300), auto payment (\$500), insurance (\$2,500), and property taxes (\$1,166.67)¹. *See id.* The Debtor does not include other basic living expenses, such as food. *See id.* The Debtor's monthly plan payments total \$2,888. *See id.* Accordingly, total monthly disbursements equal \$9,595.67. *See id.* This exceeds the projected monthly income by \$1,095.67, resulting in a monthly deficit.

6. The Debtor's two most recent MORs are for September and October 2021. *See* Docket Nos. 70 and 73. The September MOR shows gross income of \$5,539.00, payroll deductions of \$2,751, and expenses of \$4,478, resulting in a negative net monthly income of (\$1,690). *See* Docket No. 70. The October MOR shows gross income of \$5,539.00, payroll deductions of \$2,751, and expenses of \$8,146, resulting in a negative net monthly income of (\$5,358). *See* Docket No. 73. The October MOR also shows an ending cash balance for the month of \$1,503. *See id.*

LEGAL ANALYSIS

7. Pursuant to 11 U.S.C. § 586, the U.S. Trustee is obligated to oversee the administration of Chapter 11 cases. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on any issue in any case or proceeding under the Bankruptcy Code. Such oversight is part

¹ Based on quarterly property tax payment of \$3,500.

of the U.S. Trustee's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.)*, 33 F.2d 294, 295-96 (3d Cir. 1994) (noting that the U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

8. Confirmation of a chapter 11 plan requires that the Debtor meet all requirements of Section 1129(a). *See Matter of Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 220-21 (Bankr. D.N.J. 2000).

Feasibility – 11 U.S.C. § 1129(a)(11)

9. Section 1129(a)(11) requires a debtor to demonstrate the plan is feasible. *See generally*, 11 U.S.C. § 1129(a)(11). The standard of proof required by a debtor to prove a chapter 11 plan's feasibility is by a preponderance of the evidence. *See In re Rubicon US REIT, Inc.*, 434 B.R. 168, 174 (Bankr. D. Del. 2010); *In re Trans Max Tech., Inc.*, 349 B.R. 80, 92 (Bankr. D. Nev. 2006). The debtor must present evidence to sufficiently demonstrate that a plan has a reasonable chance of succeeding. *See Greate Bay Hotel & Casino, Inc.*, 251 B.R. at 226. The debtor has to establish concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under a proposed plan. *See Trans Max Tech., Inc.*, 349 B.R. at 92.

10. In addition, the Court is obligated to independently evaluate the plan and determine whether it offers a reasonable probability of success. *See Greate Bay Hotel & Casino, Inc.*, 251 B.R. at 226.

11. "The purpose of § 1129(a)(11) 'is to prevent confirmation of visionary schemes that promise creditors and equity security holders more under a proposed plan than the debtor

could possibly attain after confirmation.”” *See In re Sound Radio, Inc.*, 103 B.R. 521, 522 (D.N.J. 1989), *aff’d sub nom Appeal of Robinson*, 908 F.2d 964 (3d Cir. 1990) (citation omitted).

12. The facts and circumstances of this case demonstrate that the Modified Plan is not feasible and, as a result, fails to qualify for confirmation.

13. The Debtor’s own plan projections show that the Debtor will have a monthly deficit of \$1,095.67 every month.

14. Moreover, the Debtor’s most recent MORs show gross monthly income of \$5,539, and after payroll deductions, the monthly income has only been \$2,788.00. This is significantly less than the monthly projections of \$8,500.

15. The Debtor failed to prove the ability to make plan payments.

16. As the Modified Plan does not comply with Section 1129(a)(11), confirmation must be denied.

CONCLUSION

WHEREFORE, it is respectfully submitted that the Court deny confirmation and grant such other relief as the Court deems just and proper.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: /s/ Lauren Bielskie
Lauren Bielskie
Trial Attorney

Dated: December 16, 2021